IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVL APELLATE JURISDICTION

APPEAL FROM ORDER NO.636 OF 2007

M/s.OZ Reality Pvt. Ltd. ..Appellants
(Orig.Plaintiffs)

Versus

1. Mrs.Sheetal Ravi Pittie

2. ICICI Bank ..Respondents
(Orig. Respondents)

S/Shri R.D. Soni i/b. Sujay Gawade for the Appellant
S/Shri R.A. Thorat i/b. Himanshu V. Kode for the Respondent No.1
S/Shri Birendra Saraf a/w. Sachin Chandran, Ms.Raj Lakshmi Nair and Ms. Ankita Bajpai i/b. M/s. Manilal Kher Ambalal and Co. for the Respondent No.2.

CORAM : S.R. SATHE,J.
DATED : 24/09/2007

ORAL ORDER :-

1. The Appellants-original Plaintiffs have filed this appeal against the order passed by the 12th Joint CJSD, Pune in Special Civil Suit No.280 of 2007 below Exh-5 and 5A whereby Plaintiff's application for temporary injunction restraining defendants from transferring the amount of plaintiff-company from its account and restraining defendant No.1 from appropriating amount of Rs.28 lakhs transferred to her account bearing No.000501019486 till the disposal of the suit was rejected and Plaintiff's prayer for attachment of the above mentioned amount as per Order-38, Rule-5 of CPC was also rejected. For the sake of

convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

2. The brief facts giving rise to this present appeal are as under :-

Plaintiff is a company registered under the Indian Companies Act carrying on business of real estate. The said Company is being managed by its director Ravi Pittie, husband of defendant No.1. The defendant No.1 was also Director and one of the share holder of the Plaintiff Company. In fact 10000 equity shares of the Plaintiff Company were held only in between Ravi Pettie and her wife defendant No.1. The defendant No.1 resigned from the Plaintiff Company and directorship voluntarily by her letter dated 01/02/2006 and also transferred her shares. Thus, she was no more concerned with the Plaintiff company. The Plaintiff accordingly informed the Registrar of Company by submitting form-32 in February-2006 and another director was appointed in place of defendant No.1. The Plaintiff-company is having an account in the defendant No.2 ICICI Bank, Bund Garden Road, Pune. As per the Memorandum of association only Directors were authorized to operate the said bank account. When defendant No.1 resigned Directorship, Plaintiff company

informed the defendant No.2 accordingly vide their letter dated 28/02/2006. Some time in 2nd week of February-2007 the Director of Plaintiff Company namely Ravi Pettie received SMS informing that defendant No.2 bank has transferred the amount of Rs.28 lakhs from the account of Plaintiff Company to personal account of defendant No.1 bearing No.000501019486. When the Director Ravi Pettie went to Bank he was shown letter dated 10/02/2007. From the said letter it transpired that defendant No.1 has prepared a forged letterhead of Plaintiff-company and transferred the amount from Plaintiff's account to her personal account. Plaintiff, therefore, filed complaint with police against defendant No.1 and also filed the present suit for recovery of the amount of Rs.28 lakhs from the defendant Nos.1 and 2 and prayed for the permanent injunction restraining defendants from transferring the amount from the Plaintiff's account and restraining defendant No.1 from appropriating the amuont transferred to her personal account.

3. The Plaintiff also submitted an application for temporary injunction and prayed that defendant No.1 be restrained from appropriating the amount of Rs.28 lakhs transferred to her account from Plaintiff's account.

Plaintiff also submitted an application under Order-38, Rule-5 for attachment of the said amount of Rs.28 lakhs.

4. The defendant No.1 filed her reply and opposed the application. She filed affidavit in reply and contended that Plaintiff is not entitled to file the present suit and Plaintiff-company has in fact become defunct. She also denied having submitted resignation voluntarily. The defendant No.1 also contended that even after 01/02/2006, nearly amount of Rs.68 lakhs have been transferred from her savings account to Plaintiff-company's account. She also submitted that she is in fact entitled to get huge amount from Plaintiff and as such she claimd the said amount by way of counterclaim. However, she did not pay any Court fee stamp on the same on the ground that she being women, is exempted from paying the Court Fee stamp. She contended that Plaintiff has not made out any prima facie case and the balance of convenience is not in favour of Plaintiff. She also pointed out that huge amount is lying in her account and there is no need to pass order under Order-38, Rule-5 against her.

5. The defendant No.2 bank filed its say and

admitted that they had received letter from the Plaintiff dated 28/02/2006 informing about the resignation of defendant No.1. However, they denied that there was any negligence on their part from transferring amount from Plaintiff's account to defendant No.1. The Bank therefore contended that Plaintiff is not entitled to claim any relief against the bank.

6. After hearing the arguments advanced by both the learned Advocates and considering the documents produced by both the parties, the learned Trial Judge came to the conclusion that there was dispute between Ravi Pettie and his wife defendant No.1 who were the only director of Plaintiff-company. He also held that huge amount was transferred even after 1st February, 2006 from defendant No.1's account to Plaintiff's account. Thus, the present case appears to be the outcome of the dispute between the husband and wife and Plaintiff has failed to make out prima facie case for granting temporary injunction or passing order under Order-38, Rule-5 of CPC. He, therefore, rejected both the applications.

7. Being aggrieved by the above order the

Plaintiff-company has filed the present appeal. In this appeal before me, Shri Soni, learned Advocate for the Plaintiff-company has urged two points. Firstly, he submitted that there is prima facie material to show that the defendant No.1 had in fact resigned the directorship and even then she transferred the amount from Plaintiff's account to her personal account by playing fraud and preparing forged document. He, therefore, submitted that the learned Trial Judge ought to have held that the Plaintiff had made out a prima facie case for granting temporary injunction and attachment before Judgement. The learned Advocate therefore submitted that the appeal be allowed and Plaintiff's prayer for temporary injunction and attachment before the judement be granted. As against this, Shri Thorat, learned Advocate for the defendant No.1 submitted that Plaintiff Company had in fact become defunct after the alleged resignation of defendant No.1 and Plaintiff had no authority to file the present suit. Secondly, he canvassed before me that huge amount has been transferred from account of defendant No.1 to Plaintiff's account even after 01/02/2006 and that it would show that the story with regard to resignation of defendant can not be accepted. He, therefore, submitted that the order passed by the

learned Trial Judge is legal and correct. Shri Saraf, learned Advocate for the defendant No.2 Bank submitted that bank has no interest either in Plaintiff or in defendant No.1 and they have merely acted as per the direction issued by the Plaintiff and defendant No.1. He also submitted that there is nothing to indicate that defendant No.2 Bank is in collusion with Plaintiff or defendant. He, therefore, submitted that no order be passed against defendant No.2.

8. It is not in dispute that the Plaintiff-company had 10000 equity shares and the same were held by Ravi Pittie and his wife defendant No.1. It is also an admitted fact that the major portion of the said shares was held by the defendant No.1. Admittedly, Plaintiff-company is having account bearing No.000505005163 in the defendant No.2 bank and both the Directors were authorized to operate the said account.

9. It is Plaintiff's case that the defendant No.1 voluntarily submitted her resignation of Directorship vide letter dated 01/02/2006. Firstly, it must be noted that the defendant No.1 has not categorically stated the letter dated 01/02/2006 is not signed by her. If we peruse her affidavit we find that she has only given

evasive reply to the allegations made by the Plaintiff in this behalf. She has vaguely stated that it is false to say that she has resigned from the Directorship voluntarily. Though, specific allegation has been made against her that letterhead on which she has written the letter is not of the company and it is forged one, no satisfactory reply is given by the defendant No.1 in this behalf. On the contrary, it has come on record that the Plaintiff's Director Ravi Pittie filed complaint on behalf of Plaintiff-Company regarding the said forged document and transfer of the amount of Rs.28 lakhs from the Plaintiff's account to the account of defendant No.1. It is not in dispute that on the basis of the said complaint police have in fact registered an offence punishable under section 420, 468 etc. against the defendant No.1. The defendant No.1 filed an application for anticipatory bail and the same was granted. However, merely because anticipatory bail was granted to her it can not be said that the allegations made by the Plaintiff is proved to be false.

10. It is an admitted fact that the defendant No.2 bank had received a letter from Plaintiff dated 28/02/2006 informing them that defendant No.1 has

resigned from the directorship of Plaintiff-Company. When such was the position it was in fact not proper on the part of the defendant No.2 Bank to transfer the amount from the Plaintiff's Bank account to the personal account of defendant No.1 only at the instance of defendant No.1. This clearly shows that the defendant No.2 has failed to carry out their duty properly. What is surprising is that the defendant No.2 Bank is not even admitting that they ought to have made necessary inquiry before transferring the amount to defendant's account particularly when the bank had received letter from Plaintiff Company informing them about the resignation of the defendant No.1 as Director. As a result of the resignation, the defendant No.1 was in fact not at all entitled to operate the Plaintiff's account. So, the defenant No.2 bank ought to have realized this fact but it seems that they did not exercise proper care and as a result of the same transferred the amount. In fact, when they received letter from the Plaintiff Company they ought to have made necessary endorsement on the Plaintiff's account which would have put the concerned officer of the bank on guard.

11. It is true that even after 01/02/2006, some

amount of defendant No.1's account has been transferred to Plaintiff's account. However, it must be noted that it is not the case of defendant No.1 that the said amounts have been transferred by the Plaintiff fradulently. Had it been so, she would have made grievance about the same at the earliest but that has not happened. Besides this, in the present suit we are mainly concerned with the question as to whether after tendering resignation on 01/02/2006, the defendant No.1 was entitled to operate the Plaintiff's account. In my opinion, the Plaintiff has certainly placed on record sufficient material to show prima facie that the defendant No.1 resigned the directorship on 01/02/2006 and thereby she was not entitled to operate the Plaintiff's account in defendant No.2 Bank after 01/02/2006. Even then we find that she issued letter dated 10/02/2007 and asked the defendant No.2 Bank to transfer the amount of Plaintiffs-company to her personal account. This itself appears to be illegal and improper. Incidentally, it must be noted that on the letterhead dated 10/02/2007 name of company is shown as OZ REALTY Pvt. Ltd. while the name of the company is in fact OZ REALITY. Relying on this discrepancy it was argued on behalf of the Plaintiff that letterhead on which defendant No.1 wrote letter to the defendant No.2

bank is fabricated. No satisfactory answer is given by the defenadnt No.1 in this behalf.

12. From the perusal of the record, it is very clear that Plaintiff had submitted prescribed form No.32 to the Registrar of firm informing that defenant No.1 has resigned the directorship. So, this also indicates that resignation was accepted and acted upon by the Plaintiff-company and as such defendant No.1 was not at all authorized to withdraw or transfer the amount of Plaintiff-company from the Plaintiff's account.

13. A feeble attempt has been made on behalf of the defenant No.1 to show that after the defenant No.1 submitted the alleged resignation the defenadnt No.1 was in fact not entitled to carry on any further activity as there were no two directors at the relevant time. However, Shri Soni, learned Advocate for the Plaintiff submitted that under the circumstances of the case having regard to the provisions of Section 253 and 254 of the Companies Act it can not be said that Plaintiff-Company is no more in existence or that Plaintiff was not entitled to submit form-32. For this proposition, he has placed reliance on a case reported

in **Company Cases VOL-47 PAGE-652** wherein the Madras High Court has observed that :-

> ***"In the absence of any provision either in the Companies Act, 1956, or in the memorandum or articles of association of the company regarding resignation by a director, the ordinary rule of common law must be applied and a director who had submitted his resignation would be deemed to have resigned from his office from the date of submission of his resignation, when his intention is unequivocally expressed either orally or by a letter. There is no obligation under the Companies Act requiring a director, even if he is the only director, to co-opt another in case he intends to resign his office. From the provisions of the Companies Act, there is nothing to show that such a co-option is a condition precedent for a director validly tendering his resignation. The power of co-option is only an enabling provision to co-opt so as to have the quorum for holding a meeting."***

Having regard to above observations, I am also of the view that there is no substance in the arguments advanced by the learned Advocate for the defendant No.1 in this behalf and at this stage it is certainly not necessary to find out the implication of the defendant's resignation on the status of the Plaintiff-company, as presently we are only concerend to find out whether defendant No.1 was entitled to transfer the amount of Plaintiff Company to her personal account.

14. Thus, from the above discussion, I have no hesitation to hold that Plaintiff has made out a prima facie case to show that defendant No.1 has illegaly, unauthorizedly transferred money from the Plaintiff-Company's account to her personal account. So, in order to protect the interest of Plaintiff-Company it is necessary to grant temporary injunction as prayed. From the fact that the defendant No.1 though she was not having authority tried to appropriate the Plaintiff-Company's amount shows that there is reasonable apprehension on the part of the Plaintiff that if the said amount is not attached then even if decree is passed in favour of Plaintiff-Company it would be of no use and Plaintiff would not be in a position to recover the amount from the defendant.

15. From the perusal of the order passed by the learned Trial Judge it seems that he has given undue importance to the fact that there is dispute between Ravi Pittie, Director of Plaintiff-Company and defendant No.1 who is his wife. The said dispute has nothing to do so far as issue involved in the present suit is concerned. As he failed to consider the real point in issue involved at this stage, he reached to a wrong conclusion and as such I think that this is a fit case where it is necessary to interefere with the order passed by the learned Trial Judge. Hence, I pass the following order:-

O R D E R

Appeal is allowed.

The order passed by the 12th Joint, CJSD Pune below Exh-5 and Exh-5A is set aside.

Both the applications are allowed. The defendant Nos. 1 and 2 are hereby restrained from transferring any amount from Plaintiff's account in the defendant No.2 bank till the disposal of the suit and defendant No.1 is also restrained from appropriating the amount of Rs.28 lakhs which is transferred to her

personal account No.000501019486 till the disposal of the suit. The said amount stands attached under Order-38, Rule-5 of CPC.

However, the above order is subject to Plaintiff submitting an undertaking to this Court within 10 days from today to the effect that he would compensate the defendant No.1 in case Plaintiff's suit is dismissed.

The defendants to pay Plaintiff the costs of this appeal and bear their own.

(S.R.SATHE,J.)